

## 517.02 PERSONS CAPABLE OF CONTRACTING.

Every person who has attained the full age of 18 years is capable in law of contracting marriage, if otherwise competent. A ~~female~~ person of the full age of 16 years may, with the consent of ~~her~~ the person's parents, guardian, or the court, as provided in section 517.08, receive a license to marry, when, after a careful inquiry into the facts and the surrounding circumstances, ~~her~~ the person's application for a license is approved by the judge of the juvenile court of the county in which ~~she~~ the person resides. If the judge of juvenile court of the county in which ~~she~~ the person resides is absent from the county and has not by order assigned another probate judge or a retired probate judge to act in ~~his~~ the judge's stead, then the court commissioner or any judge of district court of the county may approve ~~her~~ the application for a license.

## Sec. 2. EFFECTIVE DATE.

This act is effective the day following final enactment.

Approved April 29, 1981

## CHAPTER 59 — H.F.No. 332

*An act relating to franchises; providing for the regulation of motor vehicle franchises; prohibiting certain practices by motor vehicle manufacturers; removing motor vehicle franchises from the general statutory provisions regarding franchises; requiring motor fuel franchises to extend to and bind the successors of both parties; prescribing penalties; providing remedies; amending Minnesota Statutes 1980, Section 80C.01, Subdivision 4; proposing new law coded as Minnesota Statutes, Chapters 80C and 80E; repealing Minnesota Statutes 1980, Sections 168.27, Subdivision 21; and 325D.17 to 325D.29.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[80C.145] MOTOR FUEL FRANCHISES; RIGHT OF SURVIVORSHIP.**

Subdivision 1. REQUIRED PROVISIONS. No motor fuel franchisor shall initially execute or renew a franchise agreement in the state after July 1, 1981 unless it contains the provisions of subdivisions 3 to 9.

Subd. 2. DEFINITION; DESIGNATED FAMILY MEMBER. For purposes of this section, "designated family member" means the spouse, child, grandchild, parent, brother, or sister of the motor fuel franchisee who, in the case of the motor fuel franchisee's death, is entitled to inherit the franchisee's interest in the motor fuel franchise under the terms of the franchisee's will or under the law of intestate succession of this state or who, in the case of an

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incapacitated franchisee, has been appointed by a court as the legal representative of the franchisee's property.

**Subd. 3. AUTHORIZATION.** Any designated family member of a deceased or incapacitated owner of a motor fuel franchise may succeed to the ownership of the existing franchise: (a) if the designated family member gives the motor fuel franchisor written notice of the intention to succeed to the motor fuel franchise within 60 days of the motor fuel franchisee's death or incapacity; (b) if the designated family member agrees to be bound by all terms and conditions of the existing franchise; and (c) unless there exists good cause for the refusal to honor the succession on the part of the motor fuel franchisor.

**Subd. 4. PERSONAL AND FINANCIAL DATA.** At the time of serving notice under subdivision 3, the designated family member shall provide upon the request of the motor fuel franchisor, personal and financial data that is reasonably necessary to determine whether the succession should be honored.

**Subd. 5. NOTICE OF TERMINATION OR REFUSAL TO HONOR SUCCESSION.** If a motor fuel franchisor believes in good faith that good cause exists for refusing to honor succession of the franchise by a designated family member of a deceased or incapacitated motor fuel franchisee, the franchisor may within 90 days after receipt of the personal and financial data requested under subdivision 4, serve notice upon the designated family member of its refusal to honor succession and of its intent to terminate the existing motor fuel franchise with the designated family member no sooner than 90 days from the date the notice is served.

**Subd. 6. CONTENTS OF NOTICE.** The notice must state the specific grounds for the refusal to honor the succession and the termination of the existing franchise with the designated family member.

**Subd. 7. EFFECT OF NOTICE NOT TIMELY SERVED.** If notice of refusal and termination is not timely served upon the designated family member, the existing motor fuel franchise shall continue in effect subject to termination only as otherwise permitted by law.

**Subd. 8. BURDEN OF PROOF.** In determining whether good cause for the refusal to honor the succession exists, the motor fuel franchisor has the burden of proving that the successor is a person who is not of good moral character or does not meet the franchisor's existing, reasonable standards.

**Subd. 9. SUCCESSION AGREEMENTS.** Notwithstanding the foregoing, in the event the motor fuel franchisee and the motor fuel franchisor have duly executed an agreement concerning the succession rights prior to the franchisee's death or incapacitation, the agreement shall be observed, even if the agreement designates an individual other than the surviving spouse or heirs of the franchisee.

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Subd. 10. ENFORCEMENT. The attorney general or any aggrieved party may institute a civil action in the district court for an injunction prohibiting a violation of this section. It is no defense to the action that the state or the aggrieved party has adequate remedies at law.

**Sec. 2. [80E.01] LEGISLATIVE PURPOSE AND INTENT.**

The legislature finds and declares that the distribution and sale of motor vehicles within this state vitally affects the general economy of the state and the public interest and the public welfare, and that in order to promote the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate and license motor vehicle manufacturers, distributors or wholesalers, and factory or distributor representatives, and to regulate dealers of motor vehicles doing business in this state in order to prevent fraud, impositions, and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state.

**Sec. 3. [80E.02] APPLICABILITY.**

The provisions of sections 2 to 18 shall apply to all new motor vehicle dealers and contracts existing between new motor vehicle dealers and manufacturers on the effective date of sections 2 to 18 and to all subsequent contracts between new motor vehicle dealers and manufacturers.

**Sec. 4. [80E.03] DEFINITIONS.**

Subdivision 1. TERMS. As used in sections 2 to 18, unless the context otherwise requires, the following terms have the meanings given them.

Subd. 2. MOTOR VEHICLE. "Motor vehicle" is as defined in Minnesota Statutes, Section 168.011, Subdivision 4, but does not include farm implements or machinery or special mobile equipment as defined in section 168.011, subdivision 22.

Subd. 3. DEALER. "New motor vehicle dealer" or "dealer" means a person who in the ordinary course of business is engaged in the business of selling new motor vehicles to consumers or other end users and who holds a valid sales and service agreement, franchise, or contract, granted by a manufacturer, distributor, or wholesaler for the sale of its motor vehicles.

Subd. 4. MANUFACTURER. "Manufacturer" means any person who manufactures or assembles new motor vehicles or any person, partnership, firm, association, joint venture, corporation, or trust which is controlled by the manufacturer.

Subd. 5. DISTRIBUTOR. "Distributor" means any person who in whole or in part offers for sale, sells, or distributes any new motor vehicle to new motor vehicle dealers, or who maintains factory representatives or who controls any person who in whole or in part offers for sale, sells, or distributes any new motor vehicle to new motor vehicle dealers.

Subd. 6. FACTORY BRANCH. "Factory branch" means a branch office maintained by a manufacturer for the purpose of selling, or offering for sale, motor vehicles to a distributor or new motor vehicle dealer, or for directing or supervising in whole or in part factory or distributor representatives.

Subd. 7. NEW MOTOR VEHICLE. "New motor vehicle" means a motor vehicle which is in the possession of a manufacturer, distributor, or wholesaler, or has been sold only to the holders of a valid sales and service agreement, franchise, or contract, granted by the manufacturer, distributor, or wholesaler for the sale of the new motor vehicle and which is in fact new and on which the original title has not been issued from the franchised dealer.

Subd. 8. FRANCHISE. "Franchise" means the agreement or contract between any new motor vehicle manufacturer, written or otherwise, and any new motor vehicle dealer which grants to the dealer the right to market motor vehicles and which purports to fix the legal rights and liabilities of the parties to the agreement or contract.

Subd. 9. GOOD FAITH. "Good faith" means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade as is defined and interpreted in Minnesota Statutes, Section 336.2-103, Clause (1)(b).

Subd. 10. DESIGNATED FAMILY MEMBER. "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of the owner of a new motor vehicle dealer who, in the case of the owner's death, is entitled to inherit the ownership interest in the new motor vehicle dealer under the terms of the owner's will or who, in the case of an incapacitated owner of a new motor vehicle dealer, has been appointed by a court as the legal representative of the new motor vehicle dealer's property.

Subd. 11. RELEVANT MARKET AREA. "Relevant market area" means the area within a radius of ten miles around an existing new motor vehicle dealer.

#### Sec. 5. [80E.04] WARRANTY OBLIGATIONS TO DEALERS.

Subdivision 1. REQUIREMENTS. Each new motor vehicle manufacturer shall specify in writing to each of its new motor vehicle dealers licensed in this state the dealer's obligations for preparation, delivery, and warranty service on its products. The manufacturer shall also compensate the new motor vehicle dealer for warranty service and parts required of the dealer by the manufacturer, and shall provide the dealer the schedule of compensation to be paid the dealer for parts, work, and service in connection with warranty services, and the time allowance for the performance of the work and service.

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**Subd. 2. REASONABLE COMPENSATION FOR SERVICES.** In no event shall the schedule of compensation fail to include reasonable compensation for diagnostic work, as well as repair service, parts, and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the principal factors to be given consideration shall be the prevailing wage rates paid by dealers in the community in which the dealer is doing business, and in no event shall the hourly labor rate paid to a dealer for warranty services be less than the rate charged by the dealer for like service to nonwarranty customers for nonwarranty service and repairs unless the rate is determined to be unreasonable.

**Subd. 3. VIOLATIONS.** It is a violation of this section for any new motor vehicle manufacturer to fail to: (a) perform any warranty obligations that it undertakes under the motor vehicle manufacturer's warranty; (b) include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of the defects; or (c) to compensate any of the motor vehicle dealers licensed in this state for repairs effected by a recall.

**Subd. 4. PAYMENT OF CLAIMS.** All claims made by new motor vehicle dealers pursuant to this section for labor and parts shall be paid within 30 days of their approval. Claims shall be either approved or disapproved within 30 days after they are submitted to the manufacturer in the manner and on the forms it prescribes, and any claims not specifically disapproved in writing within 30 days after the manufacturer receives them shall be construed to be approved and payment must follow within 30 days; provided, however, that the manufacturer retains the right to audit the claims for a period of two years and to charge back any amounts paid on unsubstantiated or fraudulent claims.

**Subd. 5. PRODUCT LIABILITY; LIMITATION.** As between the dealer and the manufacturer, the obligations imposed by this section shall constitute the dealer's only responsibility for product liability based in whole or in part on strict liability in tort.

**Sec. 6. [80E.05] INDEMNIFICATION REQUIRED.**

Notwithstanding the terms of any franchise agreement to the contrary, it shall be a violation of sections 2 to 18 for any new motor vehicle manufacturer to fail to indemnify and hold harmless its franchised dealers against any judgment for damages, including, but not limited to, those based on strict liability, negligence, misrepresentation, warranty (express or implied), or revocation of acceptance as is defined in Minnesota Statutes, Section 336.2-608, where the complaint, claim, or lawsuit relates solely to the alleged defective or negligent manufacture, assembly, or design of new motor vehicles, parts or

accessories or other functions by the manufacturer, beyond the control of the dealer.

**Sec. 7. [80E.06] CANCELLATIONS; TERMINATIONS.**

Subdivision 1. REQUIREMENTS. Notwithstanding the terms of any franchise agreement or waiver to the contrary, no manufacturer shall cancel or terminate any franchise relationship with a licensed new motor vehicle dealer unless the manufacturer has:

- (a) Satisfied the notice requirement of section 9;
- (b) Acted in good faith as defined in section 4, subdivision 9; and
- (c) Good cause for the cancellation or termination.

Subd. 2. CIRCUMSTANCES CONSTITUTING GOOD CAUSE. Notwithstanding the terms of any franchise agreement or waiver to the contrary, good cause exists for the purposes of a termination or cancellation, when the new motor vehicle dealer fails to comply with a provision of the franchise which is both reasonable and of material significance to the franchise relationship; provided, that the dealer has been notified in writing of the failure within 180 days after the manufacturer first acquired knowledge of the failure; and

If failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer; provided, that the new motor vehicle dealer was apprised by the manufacturer in writing of the failure; the notification stated that notice was provided for failure of performance pursuant to sections 2 to 18; the new motor vehicle dealer was afforded a reasonable opportunity in no event less than six months to comply with the criteria; and the dealer did not demonstrate substantial progress towards compliance with the manufacturer's performance criteria during the period.

**Sec. 8. [80E.07] CANCELLATION, TERMINATION; LIMITATIONS.**

Subdivision 1. CIRCUMSTANCES NOT CONSTITUTING GOOD CAUSE. Notwithstanding the terms of any franchise agreement or waiver to the contrary, the following examples represent circumstances which do not by themselves constitute good cause for the termination or cancellation of a franchise:

(a) A change of ownership of the new motor vehicle dealer's dealership. This paragraph does not authorize any change in ownership which would have the effect of the sale of the franchise without the manufacturer's or distributor's consent, but consent shall not in any case be unreasonably withheld. The burden of establishing the reasonableness is on the franchisor;

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(b) The fact that the new motor vehicle dealer refused to purchase or accept delivery of any new motor vehicle parts, accessories, or any other commodity or services not ordered by the new motor vehicle dealer, other than parts necessary to conduct recall campaigns; or

(c) The fact that the new motor vehicle dealer owns, invests in, participates in the management of, holds a license for the sale of another make or line of new motor vehicle, or has established another make or line of new motor vehicle in the same dealership facilities as those of the manufacturer; provided, that the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, and that the new motor vehicle dealer remains in substantial compliance with the terms and conditions of the franchise and with any reasonable facilities' requirements of the manufacturer.

Subd. 2. BURDEN OF PROOF. The manufacturer has the burden of proving that it acted in good faith; that the notice requirements have been complied with; and that there was good cause for the franchise termination or cancellation.

**Sec. 9. [80E.08] NOTICE OF TERMINATION OR CANCELLATION.**

Subdivision 1. REQUIREMENTS. Notwithstanding the terms of any franchise agreement or waiver to the contrary, prior to the termination or cancellation of any franchise, the manufacturer shall furnish notice of the termination, cancellation, or nonrenewal to the new motor vehicle dealer as provided in subdivision 2.

Subd. 2. GENERALLY. Notice shall be in writing and except as provided in subdivision 3 shall be given not less than 90 days prior to the effective date of the termination or cancellation.

Subd. 3. SPECIFIC EXCEPTIONS. (a) At least 15 days notice must be provided with respect to terminations or cancellations involving the following circumstances:

(1) Conviction of or plea of nolo contendere of a franchised motor vehicle dealer, or one of its principal owners, of a crime which constitutes a felony as defined in Minnesota Statutes, Section 609.02, Subdivision 2;

(2) The business operations of the franchised motor vehicle dealer have been abandoned or closed for seven consecutive business days unless the closing is due to an act of God, strike or labor difficulty, or other cause over which the dealer has no control;

(3) A significant misrepresentation by the new motor vehicle dealer; or

(4) The suspension, revocation, or refusal to renew the franchised motor vehicle dealer's license pursuant to Minnesota Statutes, Section 168.27.

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(b) Not less than 180 days notice must be provided prior to the effective date of cancellation or termination where the manufacturer or distributor is discontinuing the sale of the product line.

Subd. 4. CONTENTS AND DELIVERY. The notice shall be sent by certified mail or personally delivered to the new motor vehicle dealer. The notice shall contain the following information:

- (a) A statement of intention to terminate or cancel the franchise;
- (b) A statement of the reasons for the termination or cancellation; and
- (c) The date on which the termination or cancellation takes effect.

Sec. 10. [80E.09] PAYMENTS REQUIRED UPON TERMINATION.

Subdivision 1. REQUIREMENTS. Upon the termination or cancellation of any franchise, the new motor vehicle dealer shall, in the time prescribed, be allowed fair and reasonable compensation by the manufacturer for the following items:

(a) New motor vehicle inventory which was originally acquired from the manufacturer;

(b) Equipment and furnishings if the new motor vehicle dealer purchased them from the manufacturer;

(c) Special tools;

(d) Supplies, including parts, purchased from the manufacturer. Fair and reasonable compensation as applied to parts means that the manufacturer shall reimburse the dealer for 100 percent of the net cost of all current unused automobile and truck parts, including transportation charges, and 85 percent of the current net prices on repair parts, including superseded parts listed in current price lists or catalogs plus five percent of the current net price of all parts returned to compensate the dealer for the handling, packing, and loading of the parts;

(e) Except as provided in paragraph (f), dealership facilities if the facilities were required to be purchased or constructed as a precondition to obtaining the franchise or its renewal by the manufacturer. If the facilities described in this clause were leased and the lease was required by the manufacturer as a precondition to obtaining the franchise or to its renewal, then the manufacturer is liable for one year's payment of the rent or the remainder of the term of the lease, whichever is less. The manufacturer has no obligations under this clause if the termination or cancellation was for good cause based on the conviction or a plea of nolo contendere of the dealer or one of its principal owners for a crime which constitutes a felony as defined in Minnesota Statutes, Section 609.02, Subdivision 2, or where it has been demonstrated at the hearing that the new motor vehicle dealer has repeatedly

exhibited a course of conduct constituting fraud with respect to the manufacturer or the general public;

(f) In the event the termination or cancellation is due to a failure of performance of the dealer in sales or service as described in section 7, subdivision 2, the manufacturer shall have no obligation to purchase facilities owned by the dealer but shall be required to pay the dealer a sum equivalent to the reasonable rental value of the facilities for one year. In all other respects the provisions of paragraph (e) shall apply.

Subd. 2. TIME IN WHICH PAYMENTS MUST BE MADE. Fair and reasonable compensation shall be paid by the manufacturer when possible within 90 days of the effective date of termination or cancellation as long as this period will allow compliance with the notification requirements of Minnesota Statutes, Sections 336.6-101 to 336.6-111 or any other state or federal laws relating to creditor notification.

Subd. 3. VOLUNTARY TERMINATIONS OR CANCELLATIONS. For the purposes of reimbursement under this section, termination or cancellation includes a voluntary termination or cancellation by the dealer.

#### Sec. 11. [80E.10] NONRENEWALS.

Subdivision 1. GENERAL PROVISIONS. No manufacturer, distributor, or factory branch shall fail or refuse to renew a franchise unless the manufacturer or distributor provides the new motor vehicle dealer at least 12 months written notice of its intention not to renew and clearly indicating therein the specific grounds for nonrenewal and unless during the 12 months prior to expiration of the franchise, the manufacturer or distributor permits the dealer to sell or transfer his business to a purchaser meeting the manufacturer's or distributor's then current requirements for granting new franchises and in accordance with the provisions of section 14, paragraph (j).

Subd. 2. PERMITTED IN CERTAIN CIRCUMSTANCES. A manufacturer or distributor may fail or refuse to renew a franchise where:

- (a) Termination would be permitted pursuant to sections 2 to 18; or
- (b) The dealer and the manufacturer or distributor agree not to renew the franchise;
- (c) The manufacturer discontinues distribution of the franchise product at the dealership location, and does not establish a replacement dealer at or within two miles of that location for a period of at least four years;
- (d) The manufacturer discontinues production or distribution of the franchise product;
- (e) The manufacturer discontinues distribution of the franchise product in a geographic area due to federal, state or local laws;

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(f) The dealer and the manufacturer fail to agree to changes or additions to the terms and conditions of the franchise agreement if the changes or additions would result in renewal of the franchise agreement on substantially the same terms and conditions which the manufacturer or distributor is then customarily granting renewal franchises. The manufacturer or distributor may give the new motor vehicle dealer written notice of a date which is at least 60 days subsequent to the notice, on or before which a proposed written agreement of the terms and conditions of the renewal franchise must be accepted in writing by the dealer; or

(g) The business relationship between the parties has deteriorated to the point that a reasonably harmonious association does not exist; provided the deterioration is the result of actions of a serious and significant nature by the dealer which were not caused by or attributable to unlawful acts or unfair practices of the manufacturer or distributor as described in sections 5, 13 and 14, or any federal law, and provided the manufacturer or distributor has made a good faith effort to advise the dealer of the problems contributing to the deterioration and thereby improve the business relationship in the 12 months prior to expiration of the franchise.

Subd. 3. RESTRICTIONS. Nonrenewal shall not be permitted where the refusal to renew is for the purpose of converting the new motor vehicle dealer's business premises to operation by employees or agents of the manufacturer or distributor. Operation of the premises by employees or agents of the manufacturer or distributor shall be prima facie evidence of intent to convert unless the operation is temporary for a reasonable period or pending sale to any qualified independent person at a fair and reasonable price, or in which an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions.

Subd. 4. PAYMENTS. In the event of nonrenewal or failure to renew, the manufacturer or distributor shall be obligated to make the same payments to the dealer and in the same manner, subject to the same limitations and restrictions, as are set forth in section 9.

Subd. 5. CERTAIN FRANCHISES ONLY. This section applies only when the franchise agreement has a term of at least five years. However, nothing in this section shall prohibit a manufacturer from offering or agreeing before expiration of the current franchise term to extend the term of the franchise for a limited period in order to satisfy the time of notice or nonrenewal requirement contained herein.

## Sec. 12. [80E.11] SURVIVORSHIP.

Subdivision 1. AUTHORIZATION. Any designated family member of a deceased or incapacitated owner of a new motor vehicle dealer may

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succeed to the ownership of the new motor vehicle dealer under the existing franchise or distribution agreement: (a) if the designated family member gives the manufacturer, distributor, factory branch, or importer of new motor vehicles written notice of the intention to succeed to ownership of the dealership within 120 days of the owner's death or incapacity; (b) if the designated family member agrees to be bound by all of the terms and conditions of the existing franchise; and (c) unless there exists good cause for refusal to honor the succession on the part of the manufacturer, factory branch, distributor, or importer.

**Subd. 2. PERSONAL AND FINANCIAL DATA.** At the time of serving notice under subdivision 1, the designated family member shall provide, upon the request of the manufacturer, distributor, factory branch, or importer, personal and financial data that is reasonably necessary to determine whether the succession should be honored.

**Subd. 3. NOTICE OF DISCONTINUANCE OR REFUSAL TO HONOR SUCCESSION.** If a manufacturer, distributor, factory branch, or importer believes that good cause exists for refusing to honor the succession to the ownership and operation of a new motor vehicle dealer by a family member of a deceased or incapacitated owner of a new motor vehicle dealer under the existing franchise agreement, the manufacturer, distributor, factory branch, or importer may, within 60 days after receipt of the personal and financial data requested under subdivision 2, serve notice upon the designated family member of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the new motor vehicle dealer no sooner than 90 days from the date the notice is served.

**Subd. 4. CONTENTS OF NOTICE.** The notice must state the specific grounds for the refusal to honor the succession and discontinue the existing franchise agreement with the new motor vehicle dealer.

**Subd. 5. EFFECT OF NOTICE NOT TIMELY SERVED.** If notice of refusal and discontinuance is not timely served upon the family member, the franchise agreement shall continue in effect subject to termination only as otherwise permitted by sections 2 to 18.

**Subd. 6. BURDEN OF PROOF.** In determining whether good cause for the refusal to honor the succession exists, the manufacturer, distributor, factory branch, or importer has the burden of proving that the successor is a person who is not of good moral character and does not meet the franchisor's existing and reasonable standards and, considering the volume of sales and service of the new motor vehicle dealer, uniformly applied minimum business experience standards in the market area.

**Subd. 7. SUCCESSION AGREEMENTS.** Notwithstanding the foregoing, in the event the new motor vehicle dealer and franchisor have duly

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executed an agreement concerning succession rights prior to the dealer's death, the agreement shall be observed, even if it designates an individual other than the surviving spouse or heirs of the franchised motor vehicle dealer.

**Sec. 13. [80E.12] UNLAWFUL ACTS BY MANUFACTURERS, DISTRIBUTORS, OR FACTORY BRANCHES.**

It shall be unlawful for any manufacturer, distributor, or factory branch to require a new motor vehicle dealer to do any of the following:

(a) Order or accept delivery of any new motor vehicle, part or accessory thereof, equipment, or any other commodity not required by law which has not been voluntarily ordered by the new motor vehicle dealer;

(b) Order or accept delivery of any new motor vehicle, part or accessory thereof, equipment, or any other commodity not required by law in order for the dealer to obtain delivery of any other motor vehicle ordered by the dealer or to qualify for or participate in any rebate, refund, or similar program offered by the manufacturer;

(c) Order or accept delivery of any new motor vehicle with special features, accessories, or equipment not included in the list price of the motor vehicles as publicly advertised by the manufacturer or distributor;

(d) Participate monetarily in an advertising campaign or contest, or to purchase any promotional materials, showroom, or other display decorations or materials at the expense of the new motor vehicle dealer;

(e) Enter into any agreement with the manufacturer or to do any other act prejudicial to the new motor vehicle dealer by threatening to cancel a franchise or any contractual agreement existing between the dealer and the manufacturer. Notice in good faith to any dealer of the dealer's violation of any terms of the franchise agreement shall not constitute a violation of sections 2 to 18;

(f) Change the capital structure of the new motor vehicle dealer or the means by or through which the dealer finances the operation of the dealership; provided, that the new motor vehicle dealer at all times meets any reasonable capital standards agreed to by the dealer; and also provided, that no change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor as provided in section 14, paragraph (j);

(g) Prevent or attempt to prevent, by contract or otherwise, any motor vehicle dealer from changing the executive management control of the new motor vehicle dealer unless the franchisor proves that the change of executive management will result in executive management control by a person who is not of good moral character or who does not meet the franchisor's existing reasonable capital standards and, with consideration given to the volume of

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sales and services of the new motor vehicle dealer, uniformly applied minimum business experience standards in the market area; provided, that where the manufacturer, distributor, or factory branch rejects a proposed change in executive management control, the manufacturer, distributor, or factory branch shall give written notice of its reasons to the dealer;

(h) Refrain from participation in the management of, investment in, or the acquisition of, any other line of new motor vehicle or related products; provided, however, that this clause does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, and that the new motor vehicle dealer remains in substantial compliance with the terms and conditions of the franchise and with any reasonable facilities requirements of the manufacturer;

(i) During the course of the agreement, change the location of the new motor vehicle dealership or make any substantial alterations to the dealership premises during the course of the agreement, when to do so would be unreasonable; or

(j) Prospectively assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by sections 2 to 18 or to require any controversy between a new motor vehicle dealer and a manufacturer, distributor, or factory branch to be referred to any person or tribunal other than the duly constituted courts of this state or the United States, if the referral would be binding upon the new motor vehicle dealer.

#### **Sec. 14. [80E.13] UNFAIR PRACTICES BY MANUFACTURERS, DISTRIBUTORS, FACTORY BRANCHES.**

It is unlawful and an unfair practice for a manufacturer, distributor, or factory branch to engage in any of the following practices:

(a) To delay, refuse, or fail to deliver new motor vehicles or new motor vehicle parts or accessories in reasonable time and in reasonable quantity relative to the new motor vehicle dealer's facilities and sales potential in the dealer's relevant market area, after having accepted an order from a new motor vehicle dealer having a franchise for the retail sale of any new motor vehicle sold or distributed by the manufacturer or distributor, if the new motor vehicle or new motor vehicle parts or accessories are publicly advertised as being available for delivery or actually being delivered. This clause is not violated, however, if the failure is caused by acts or causes beyond the control of the manufacturer;

(b) To refuse to disclose to any new motor vehicle dealer handling the same line make, the manner and mode of distribution of that line make within the relevant market area;

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(c) To obtain money, goods, service, or any other benefit from any other person with whom the dealer does business, on account of, or in relation to, the transaction between the dealer and the other person, other than for compensation for services rendered, unless the benefit is promptly accounted for, and transmitted to, the new motor vehicle dealer;

(d) To increase prices of new motor vehicles which the new motor vehicle dealer had ordered for private retail consumers prior to the dealer's receiving the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each order if the vehicle is in fact delivered to that customer. In the event of manufacturer price reductions, the amount of any reduction received by a dealer shall be passed on to the private retail consumer by the dealer if the retail price was negotiated on the basis of the previous higher price to the dealer;

(e) To offer any refunds or other types of inducements to any new motor vehicle dealer for the purchase of new motor vehicles of a certain line make to be sold to the state or any political subdivision thereof without making the same offer to all other new motor vehicle dealers in the same line make within the relevant market area;

(f) To release to any outside party, except under subpoena or in an administrative or judicial proceeding involving the manufacturer or dealer, any business, financial, or personal information which may be provided by the dealer to the manufacturer, without the express written consent of the dealer or unless pertinent to judicial or governmental administrative proceedings or to arbitration proceedings of any kind;

(g) To deny any new motor vehicle dealer the right of free association with any other new motor vehicle dealer for any lawful purpose;

(h) To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursement or authority granted its new vehicle dealers to make warranty adjustments with retail customers;

(i) To compete with a new motor vehicle dealer in the same line make operating under an agreement or franchise from the same manufacturer in the relevant market area. A manufacturer shall not, however, be deemed to be competing when operating a dealership either temporarily for a reasonable period, or in a bona fide retail operation which is for sale to any qualified independent person at a fair and reasonable price, or in a bona fide relationship in which an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions; or

(j) To prevent a new motor vehicle dealer from receiving fair and reasonable compensation for the value of the new motor vehicle dealership. There shall be no transfer, assignment of the franchise, or major change in the

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executive management of the dealership, except as is otherwise provided in sections 2 to 18, without consent of the manufacturer, which shall not be unreasonably withheld. Denial of the request must be in writing and delivered to the new motor vehicle dealer within 60 days after the manufacturer receives the information necessary to evaluate the proposed transfer. If a denial is not sent within this period, the manufacturer shall be deemed to have given its consent to the proposed transfer or change.

**Sec. 15. [80E.14] LIMITATIONS ON ESTABLISHING OR RELOCATING DEALERSHIPS.**

Subdivision 1. NOTIFICATION; PROTEST; HEARING. In the event that a manufacturer seeks to enter into a franchise establishing an additional new motor vehicle dealership or relocating an existing new motor vehicle dealership within or into a relevant market area where the line make is then represented, the manufacturer shall, in writing, first notify each new motor vehicle dealer in this line make in the relevant market area of the intention to establish an additional dealership or to relocate an existing dealership within or into that market area. The relevant market area is a radius of ten miles around an existing dealership. Within 15 days of receiving the notice or within 15 days after the end of any appeal procedure provided by the manufacturer, the new motor vehicle dealership may commence a civil action in a court of competent jurisdiction pursuant to section 17 challenging the establishing or relocating of the new motor vehicle dealership. An action brought under this section shall be placed on the calendar ahead of other civil actions to be heard and determined as expeditiously as possible. Thereafter the manufacturer shall not establish or relocate the proposed new motor vehicle dealership unless the court has determined that there is good cause for permitting the establishment or relocation of the motor vehicle dealership.

For the purposes of this section, the reopening in a relevant market area of a new motor vehicle dealership within two miles of a location at which a former dealership of the same line make had been in operation within the previous two years shall not be deemed the establishment of a new motor vehicle dealership.

The relocation of an existing dealer within its area of responsibility as defined in the franchise agreement shall not be subject to this section, if the proposed relocation site is not within five miles of an existing dealer of the same line make.

Subd. 2. GOOD CAUSE. In determining whether good cause has been established for not entering into or relocating an additional franchise for the same line make, the court shall take into consideration the existing circumstances, including, but not limited to:

- (a) The permanency of the investment;

**Changes or additions are indicated by underline, deletions by strikethrough.**

(b) The effect on the retail new motor vehicle business and the consuming public in the relevant market area;

(c) Whether it is injurious to the public welfare for an additional new motor dealership to be established;

(d) Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the line make in the market area including the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;

(e) Whether the new motor vehicle dealers of the same line make in the relevant market area are providing adequate market penetration and representation; provided, that good cause shall not be shown solely by a desire for further market penetration;

(f) Whether the establishment of an additional new motor vehicle dealership would increase competition, and therefore be in the public interest; and

(g) The growth or decline in population and new car registrations in the relevant market area.

**Sec. 16. [80E.15] MANUFACTURERS, DISTRIBUTORS, FACTORY BRANCHES ACTING AS LESSORS.**

A manufacturer, distributor or factory branch acting in the capacity of lessor of buildings or facilities to a new motor vehicle dealer may not take any actions or include in a lease agreement relating to those buildings or facilities any provisions which would be in contravention of or prohibited by sections 2 to 18.

**Sec. 17. [80E.16] ENFORCEMENT.**

Subdivision 1. CIVIL PENALTY. Any person who violates sections 5, 13, or 14 shall be subject to a fine of not more than \$2,000 for each violation. Any person who fails to comply with a final judgment or order rendered by a court of competent jurisdiction, issued for a violation of sections 2 to 18, shall be subject to a fine of not more than \$25,000. The fines authorized by this subdivision shall be imposed in a civil action brought by the attorney general on behalf of the state of Minnesota, and shall be deposited into the state treasury.

Subd. 2. REMEDIES CUMULATIVE. Nothing in this section shall be construed to limit the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

**Sec. 18. [80E.17] CIVIL REMEDIES.**

Notwithstanding the terms of any franchise agreement or waiver to the contrary, any person who is injured in his business or property by a violation of

sections 2 to 18, or any person injured because he refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of sections 2 to 18, may bring a civil action to enjoin further violations and to recover the actual damages sustained, together with costs and disbursements, including reasonable attorney's fees.

Sec. 19. Minnesota Statutes 1980, Section 80C.01, Subdivision 4, is amended to read:

Subd. 4. "Franchise" means a contract or agreement, either express or implied, whether oral or written, for a definite or indefinite period, between two or more persons:

(a) by which a franchisee is granted the right to engage in the business of offering or distributing goods or services using the franchisor's trade name, trademark, service mark, logotype, advertising, or other commercial symbol or related characteristics;

(b) in which the franchisor and franchisee have a community of interest in the marketing of goods or services at wholesale, retail, by lease, agreement, or otherwise; and

(c) for which the franchisee pays, directly or indirectly, a franchise fee.

"Franchise" shall include a contract, lease, or other agreement whereby the franchisee is granted the right to market ~~(1) automobiles, motorcycles, trucks, truck tractors, or self propelled motor homes or campers if the foregoing are designed primarily for the transportation of persons or property on the public highways or~~ (2) motor vehicle fuel.

"Franchise" does not include any business which is operated under a lease on the premises of the lessor as long as such business is incidental to the business conducted by the lessor on such premises, including, without limitation, leased departments and concessions.

"Franchise" does not include a contract, lease or other agreement between a new motor vehicle manufacturer, distributor, or factory branch and a franchisee whereby the franchisee is granted the right to market automobiles, motorcycles, trucks, truck tractors, or self-propelled motor homes or campers if the foregoing are designed primarily for the transportation of persons or property on public highways.

#### Sec. 20. REPEALER.

Minnesota Statutes 1980, Sections 168.27, Subdivision 21; 325D.17; 325D.18; 325D.19; 325D.20; 325D.21; 325D.22; 325D.23; 325D.24; 325D.25; 325D.26; 325D.27; 325D.28; and 325D.29 are repealed.

#### Sec. 21. EFFECTIVE DATE.

Sections 1 to 20 are effective the day following final enactment.

Approved April 30, 1981

Changes or additions are indicated by underline, deletions by ~~strikeout~~.